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APR 10 2017 Case Number: AF 09-0688
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IN THE SUPREME COURT OF THE STATE OF MONTANA

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)	
IN RE THE RULES OF)	
PROFESSIONAL CONDUCT)	
)	Case No. AF 09-0688
)	
)	PUBLIC COMMENT
)	IN SUPPORT OF
)	M. R. P. C. 8.4(g)
)	

My name is James Reavis and I have been licensed to practice as an attorney in Montana for almost five years. I am employed as an Assistant Appellate Defender with the Montana Office of the Public Defender, but I am speaking to you only in an individual capacity in this comment. I strongly urge this Court to support the inclusion of Rule 8.4(g) into the Montana Rules of Professional Conduct.

Upon learning about the Court's request for public comment on this issue, my initial reaction was "Wait, it is *not* a violation of the Rules of Professional Conduct to harass and discriminate against others on the basis of race, religion, sexual orientation, or gender identity?"

This came to me as a surprise because the Rules of Professional Conduct already hold attorneys to higher ethical standards than laypersons, both in and out of court. A lawyer cannot reveal confidential information to others. Rule 1.6. A lawyer must be truthful when making statements of material fact to third-persons. Rule 4.1. A lawyer's advertising practices must meet rigorous standards. Rules 7.1-7.5. Even a lawyer's sexual relations are partially regulated by these rules. Rule 1.8(j).

These high ethical standards aren't just for show. This Court's primary concern in regulating attorney behavior and imposing discipline when rules are violated is the protection of the public. *Matter of Goldman*, 179 Mont. 526, 550, 588 P.2d 964, 977 (1978). Preventing a lawyer from engaging in dishonest, fraudulent, or deceitful conduct protects the public. *See* Rule 8.4(c). So too will a rule that prohibits attorneys from: groping women at social events, refusing to hire a paralegal because he practices Islam, or belittling others simply because they gay, transgender, poor, or disabled.

Many have submitted comments against the implementation of this rule, primarily on the grounds that their freedom to practice religion will be infringed. This position is misguided for two reasons.

First, the prohibited conduct provided by proposed Rule 8.4(g) is already unlawful under state law. It is already unlawful to refuse a person employment or to discriminate against current employees because of race, religion, age, marital status, or sex. § 49-2-303, MCA. While people's religious beliefs may (and to some extent should) influence the way they run their local businesses, they must always act in a manner that does not discriminate against others. Law firms and their attorneys should not be exempt from this general principle. To the contrary, a higher standard is required because attorneys can transfer from one law practice to another, limiting the impact an unlawful discrimination action can have. If attorneys engage in conduct that the Montana Commission for Human Rights holds to be discrimination, their ability to safely practice law should also be called into question.¹

Second, this rule does not impair a lawyer's ability to represent the clients of their choice. The rule's language already provides that this rule

¹ While inclusion of this rule is necessary to protect the public, it should be noted that this rule would probably not result in a surge of Office of Disciplinary Counsel (ODC) proceedings. Comment 3 to Model Rule 8.4 provides that the "substantive law of antidiscrimination and anti-harassment statutes and case law may guide application of paragraph (g)." For an alleged professional conduct violation to be successful, some form of substantive injury is typically required, such as an opinion affirming a malpractice lawsuit, or strong evidence establishing a clear conflict of interest. Therefore, ODC proceedings brought under the proposed rule would unlikely be successful absent a finding of discrimination from the Montana Human Rights Commission or a similar legal body. The comments to the model rule are available at: http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_8_4_misconduct/comment_on_rule_8_4.html.

does not limit the ability of attorneys to accept, decline, or withdraw from representation. The same representation standards remain in effect.

This rule also does not bar clients from representing individuals who have taken unpopular legal positions. As Comment 5 to the Model Rule explains: “A lawyer’s representation of a client does not constitute an endorsement by the lawyer of the client’s views or activities.” Our justice system requires qualified attorneys for both the plaintiff and the defendant to advocate on the controversial issues of the day. Lawyers who have been found to discriminate against others but are nonetheless allowed to continue to practice without consequence spoils and damages the integrity of our system of justice. Adoption of the proposed rule will keep Montana’s ethical standards at pace with the rest of the nation.

DATED April 10, 2017.

A handwritten signature in black ink, reading "James Reavis", with a horizontal line drawn underneath the name.

James Reavis
Attorney